

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim 16 has been amended without the addition of impermissible new matter. Claim 19 has been cancelled. Upon entry of this paper, therefore, claims 16-18 and 20-31 are pending in this application. Claims 20-23 are withdrawn from consideration.

Finality of Office Action and Consideration of the Amendment

The Office Action Summary form PTOL-326 indicated that the Office Action dated December 29, 2011, was made final. For at least the reason that is set forth below, withdrawal of the finality of the Office Action is respectfully requested.

The rejections of claims 16-19 and 24-31 were withdrawn and new grounds of rejection were added after Applicants filed a Reply (with no claim amendments) on September 30, 2011. The new grounds of rejection included the additions of the references U.S. Patent No. 6,070,659 to Hosoya (hereafter “Hosoya”) and U.S. Patent No. 6,866,300 to Hayes et al. (hereafter “Hayes”). MPEP 706.07(a) provides:

second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In this case, the new grounds of rejection were not necessitated by amendment. Accordingly, Applicants request reconsideration and withdrawal of the finality of the Office Action.

Furthermore, the subject matter of claim 19 has been incorporated into claim 16. This amendment does not raise new issues requiring further search and/or consideration because claim 19 was previously considered by the Office. Applicants respectfully request consideration of at least claim 16.

Rejections Under 35 U.S.C. § 103(a)

Claims 16-18 and 24-31 stand rejected under 35 U.S.C. § 103 as unpatentable over U.S. Patent No. 6,070,659 to Hosoya (hereafter “Hosoya”) in view of U.S. Patent No. 6,866,300 to Hayes et al. (hereafter “Hayes”). Claim 19 stands rejected under 35 U.S.C. § 103 as unpatentable over Hosoya in view Hayes as applied to claims 16 and 18 and further in view of U.S. Patent No. 4,589,265 to Nozawa (hereafter “Nozawa”). For at least the following reasons, these rejections should be withdrawn.

Hosoya and Hayes fail to disclose, teach or suggest a fixing device for a motor vehicle air-conditioning system comprising, among other things, a housing and a positioning element, “wherein the positioning element has a first set of two slots configured to receive the lines and a second set of slots extending in a line toward each other at longitudinal ends of the positioning element,” as recited in claim 16. Emphasis added. On page 6 of the Office Action, the Office acknowledges that “Hosoya as modified by Hayes et al. fails to disclose a fixing device wherein the second set of slots extends in a line toward each other at longitudinal ends of the positioning element.”

Nozawa fails to cure the deficiencies of Hosoya and Hayes. Nozawa discloses a heat exchanger including a mounting plate 144 fixed to an end plate 122 while being positioned by lugs 146 which are formed on the end plate 122. See col. 5, lines 14-16. One of ordinary skill in the art would understand that a lug is a projection on an object by which it may be carried or fixed in place. See Fig. 8. In fact, on page 7 of the Office Action, the Office states that “Nozawa teaches a fixing device wherein a set of fixing projections 146 extend in a line toward each other at longitudinal ends of a positioning element 144.” Emphasis added. Applicants respectfully submit that a lug is not a slot.

In addition, the lugs 146 are not located at longitudinal ends of the positioning element. Instead, the lugs 146 are positioned around the periphery of inlet opening 136 and outlet opening 138. See col. 6, lines 13-22 and Fig. 8. Nor can these lugs 146 suggest the orientation of the indents 140 of Hayes. Indeed, it is not clear how the lugs 146 of Nozawa even relate to the indents 140 of Hayes (which the Office considers to be the second set of

slots of claim 16). Consequently, Nozawa fails to cure the deficiencies of Hosoya and Hayes so as to arrive at a positioning element, “wherein the positioning element has a first set of two slots configured to receive the lines and a second set of slots extending in a line toward each other at longitudinal ends of the positioning element,” as recited in claim 16. Emphasis added.

Claim 16 is patentable over Hosoya, Hayes, Nozawa and any combination thereof. Claims 17, 18 and 24-31 depend from claim 16 and are allowable for at least the reasons that claim 16 is allowable, in addition to their respective recitations. Favorable reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

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